

Part 19

General Provisions Related to Protest or Appeal

63G-6a-1901 Title.

This part is known as "General Provisions Related to Protest or Appeal."

Enacted by Chapter 347, 2012 General Session

63G-6a-1902 Limitation on challenges -- Compliance with federal law.

- (1) A person may not challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, in a court, before an administrative officer or body, or in any other forum other than the forum permitted in this chapter.
- (2) A person who desires to challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge, in accordance with the requirements of this chapter.
- (3) In hearing a protest or an appeal under this chapter relating to an expenditure of federal assistance, federal contract funds, or a federal grant, the person who hears the appeal shall ensure compliance with federal law and regulations relating to the expenditure.

Amended by Chapter 196, 2014 General Session

63G-6a-1903 Effect of timely protest or appeal.

A procurement unit, other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district, may not proceed further with a solicitation or with the award of a contract:

- (1) during the pendency of a timely:
 - (a) protest under Section 63G-6a-1602;
 - (b) appeal of a protest under Section 63G-6a-1702; or
 - (c) appeal of a procurement appeals panel decision under Section 63G-6a-1802; and
- (2) until:
 - (a) all administrative and judicial remedies are exhausted;
 - (b) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:
 - (i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;
 - (ii) the head of a procurement unit with independent procurement authority, after consultation with the procurement unit's attorney, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or
 - (iii) for a procurement unit that is not represented by the attorney general's office, the procurement unit, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or
 - (c) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than district court:
 - (i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;

- (ii) the head of a procurement unit with independent procurement authority, after consultation with the procurement unit's attorney, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or
- (iii) for a procurement unit that is not represented by the attorney general's office, the procurement unit, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is necessary to protect the best interest of the procurement unit or the state.

Amended by Chapter 355, 2016 General Session

63G-6a-1904 Costs to or against protestor.

- (1) If a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, the protestor is entitled to the following relief as a claim against the procurement unit:
 - (a) the reasonable costs incurred in connection with the solicitation, including bid preparation and appeal costs; and
 - (b) any equitable relief determined to be appropriate by the reviewing administrative or judicial body.
- (2) If the final determination of a procurement appeals panel or other appellate body does not sustain the protest, the protestor shall reimburse the conducting or issuing procurement unit for all expenses that the conducting or issuing procurement unit incurred in defending the appeal, including personnel costs, attorney fees, other legal costs, the per diem and expenses paid by the conducting or issuing procurement unit to witnesses or appeals panel members, and any additional expenses incurred by the staff of the conducting or issuing procurement unit who have provided materials and administrative services to the procurement appeals panel for that case.
- (3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or offer.

Amended by Chapter 218, 2015 General Session

63G-6a-1906 Effect of prior determination by agents of procurement unit.

In any judicial action under Section 63G-6a-1802, determinations by employees, agents, or other persons appointed by the procurement unit shall be final and conclusive only as provided in Sections 63G-6a-1911, 63G-6a-1603, and 63G-6a-1705.

Amended by Chapter 196, 2014 General Session

63G-6a-1907 Effect of violation found after award of contract.

- (1) If after award of a contract it is determined administratively or upon administrative or judicial review that a procurement or award of a contract is in violation of law:
 - (a)
 - (i) if the person awarded the contract did not act fraudulently or in bad faith:
 - (A) the contract may be ratified and affirmed if it is in the best interests of the procurement unit; or
 - (B) the contract may be terminated; and

- (ii) the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract before the termination, plus a reasonable profit; or
- (b) if the person awarded the contract acted fraudulently or in bad faith:
 - (i) the contract may be declared null and void; or
 - (ii) the contract may be ratified and affirmed if it is in the best interests of the procurement unit, without prejudice to the procurement unit's rights to any appropriate damages.
- (2) Under no circumstances is a person entitled to consequential damages in relation to a solicitation or award of a contract under this chapter, including consequential damages for lost profits, loss of business opportunities, or damage to reputation.

Amended by Chapter 196, 2014 General Session

63G-6a-1909 Affect of violation found prior to award of contract.

If, before award of a contract, it is determined administratively or upon administrative or judicial review that a procurement or proposed award of a contract is in violation of law, the procurement or proposed award shall be cancelled or revised to comply with the law.

Renumbered and Amended by Chapter 347, 2012 General Session

Amended by Chapter 347, 2012 General Session, (Coordination Clause)

63G-6a-1910 Interest rates.

- (1) In controversies between a procurement unit and a contractor under this chapter, interest on amounts ultimately determined to be due to a contractor or the procurement unit are payable at the rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.
- (2) Unless otherwise specified in a lawful contract between a procurement unit and the person making a bond claim against the procurement unit, the interest rate applicable to the bond claim is the rate described in Subsection 15-1-1(2).
- (3) This section does not apply to public assistance benefits programs.

Amended by Chapter 196, 2014 General Session

63G-6a-1911 Determinations final except when arbitrary and capricious.

The determinations required under the following provisions are final and conclusive unless they are arbitrary and capricious or clearly erroneous:

- (1) Section 63G-6a-605;
- (2) Section 63G-6a-702;
- (3) Section 63G-6a-708;
- (4) Subsection 63G-6a-709(1);
- (5) Section 63G-6a-803;
- (6) Section 63G-6a-804;
- (7) Section 63G-6a-903;
- (8) Subsection 63G-6a-1204(1) or (2);
- (9) Subsection 63G-6a-1204(5);
- (10) Section 63G-6a-1205; or
- (11) Subsection 63G-6a-1206(5).

Amended by Chapter 445, 2013 General Session

